

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

BMO HARRIS BANK N.A.,

Plaintiff,

v.

DON SALAZAR,

Defendant.

Civil Action No. _____

COMPLAINT

NOW COMES Plaintiff, BMO Harris Bank N.A. (“BHB”), assignee of General Electric Capital Corporation, Transportation Truck and Trailer Solutions, LLC and GE Capital US Holdings, Inc. (Transfer Acknowledgments attached collectively as **Exhibit A**), by and through its undersigned counsel, submits this Complaint against Defendant Don Salazar (“Salazar”), and alleges as follows:

PARTIES

1. Plaintiff BHB is a national banking corporation and has its principal place of business in Chicago with an office at 111 W. Monroe Street, Chicago, Illinois 60603. It is a citizen and resident of Illinois for diversity purposes.

2. Don Salazar is an individual whose address is located at 1035 Waterfall Drive, Rio Rancho, New Mexico 87144, and as such, resides and is a citizen of the District of New Mexico.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there is diversity in citizenship and there is an amount in controversy that exceeds \$75,000.00.

4. This judicial district is proper venue for this proceeding pursuant to 28 U.S.C. §13391(b)(2), as the Defendant resides, lives or does business in the District of New Mexico and as a substantial part of the events giving rise to the cause of action, including signing of the contracts at issue, occurred in the District of New Mexico.

FACTUAL BACKGROUND

Loan and Security Agreement 1

5. On or about April 28, 2014, Salazar entered into a Loan and Security Agreement (“Agreement 1”) with BHB in the total amount of \$210,008.30, attached hereto as **Exhibit B**, for the purchase of the following:

Year	Manufacturer	Model	Description	Serial Number
2014	PETERBILT	389-SERIES:389 131" BBC SFFA TRACTOR	389-SERIES:389 131" BBC SFFA TRACTOR	1XPXD49X1ED241090

6. Pursuant to Agreement 1, Salazar agreed to make monthly payments for the purchase of the above Equipment (“Equipment 1”) beginning on or about July 1, 2014 for a term of 74 months.

7. Upon information and belief, Salazar used Equipment 1 at its address located at 1035 Waterfall Drive, Rio Rancho, New Mexico 87144.

8. Pursuant to Agreement 1, Salazar was obligated to pay a minimum monthly payment of \$2,837.95.

9. Pursuant to Paragraph 5.1 of Agreement 1, entitled “Events of Default,” Salazar will be in default under the loan if “Debtor” fails to pay when due any amount owed by it to BHB under this Agreement.

10. Pursuant to Paragraph 5.2 of Agreement 1, entitled “Remedies,” upon default of Salazar, BHB may “declare the indebtedness hereunder to be immediately due and payable.”

11. Further pursuant to Paragraph 5.2 of Agreement 1, entitled “Remedies,” upon default by Salazar, BHB may “exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to require Debtor to assemble the Equipment and deliver it to Lender at a place to be designated by lender and to enter any premises where the Equipment may be without judicial process and take possession thereof.”

12. On or about January 8, 2018, Salazar entered into a Modification Agreement (hereinafter “Modification 1”) with BHB for Agreement 1. A true and correct copy of Modification 1 is attached hereto as **Exhibit C**.

13. Pursuant to Modification 1, Salazar agreed to pay the balance of Agreement 1 as follows:

Payment Amount	No. of Payments	Payment Date
\$0.00	2	1/1/2018
\$2,933.28	32	3/1/2018

14. On or about April 1, 2018, Salazar defaulted on Modification 1 by failing to make the minimum monthly payment.

Loan and Security Agreement 2

15. On or about June 4, 2015, Salazar entered into a Loan and Security Agreement (“Agreement 2”) with BHB in the total amount of \$59,096.40, attached hereto as **Exhibit D**, for the purchase of the following:

Year	Manufacturer	Model	Description	Serial Number
2015	RANCO	DUMP TRAILERS	DUMP TRAILERS: 34' - 26' FRAME TYPE	591SD3425FR135422

16. Pursuant to Agreement 2, Salazar agreed to make monthly payments for the purchase of the above Equipment (“Equipment 2”) beginning on or about August 1, 2015 for a term of 60 months.

17. Upon information and belief, Salazar used Equipment 2 at its address located at 1035 Waterfall Drive, Rio Rancho, New Mexico 87144.

18. Pursuant to Agreement 2, Salazar was obligated to pay a minimum monthly payment of \$984.94.

19. Pursuant to Paragraph 5.1 of Agreement 2, entitled “Events of Default,” Salazar will be in default under the loan if “Debtor” fails to pay when due any amount owed by it to BHB under this Agreement.

20. Pursuant to Paragraph 5.2 of Agreement 2, entitled “Remedies,” upon default of Salazar, BHB may “declare the indebtedness hereunder to be immediately due and payable.”

21. Further pursuant to Paragraph 5.2 of Agreement 2, entitled “Remedies,” upon default by Salazar, BHB may “exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to require Debtor to assemble the Equipment and deliver it to Lender at a place to be designated by lender and to enter any premises where the Equipment may be without judicial process and take possession thereof.”

22. On or about January 8, 2018, Salazar entered into a Modification Agreement (hereinafter “Modification 2”) with BHB for Agreement 2. A true and correct copy of Modification 2 is attached hereto as **Exhibit E**.

23. Pursuant to Modification 2, Salazar agreed to pay the balance of Agreement 2 as follows:

Payment Amount	No. of Payments	Payment Date
\$0.00	2	1/20/2018
\$1,001.85	31	3/20/2018

24. On or about February 5, 2019, Salazar defaulted on Modification 2 by failing to make the minimum monthly payment.

Loan and Security Agreement 3

25. On or about June 8, 2016, Salazar entered into a Loan and Security Agreement (“Agreement 3”) with BHB in the total amount of \$72,176.40, attached hereto as **Exhibit F**, for the purchase of the following:

Year	Manufacturer	Model	Description	Serial Number
2017	TRAVIS	DUMP TRAILERS	DUMP TRAILERS: 42'-38' FRAMELESS	48X1F3925H1011168

26. Pursuant to Agreement 3, Salazar agreed to make monthly payments for the purchase of the above Equipment (“Equipment 3”) beginning on or about August 1, 2016 for a term of 60 months.

27. Upon information and belief, Salazar used Equipment 3 at its address located at 1035 Waterfall Drive, Rio Rancho, New Mexico 87144.

28. Pursuant to Agreement 3, Salazar was obligated to pay a minimum monthly payment of \$1,202.94.

29. Pursuant to Paragraph 5.1 of Agreement 3, entitled “Events of Default,” Salazar will be in default under the loan if “Debtor” fails to pay when due any amount owed by it to BHB under this Agreement.

30. Pursuant to Paragraph 5.2 of Agreement 3, entitled “Remedies,” upon default of Salazar, BHB may “declare the indebtedness hereunder to be immediately due and payable.”

31. Further pursuant to Paragraph 5.2 of Agreement 3, entitled “Remedies,” upon default by Salazar, BHB may “exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to require Debtor to assemble the Equipment and deliver it to Lender at a place to be designated by lender and to enter any premises where the Equipment may be without judicial process and take possession thereof.”

32. On or about January 8, 2018, Salazar entered into a Modification Agreement (hereinafter “Modification 3”) with BHB for Agreement 3. A true and correct copy of Modification 3 is attached hereto as **Exhibit G**.

33. Pursuant to Modification 3, Salazar agreed to pay the balance of Agreement 3 as follows:

Payment Amount	No. of Payments	Payment Date
\$0.00	2	1/20/2018
\$1,224.42	43	3/20/2018

34. On or about April 20, 2018, Salazar defaulted on Modification 3 by failing to make the minimum monthly payment.

COUNT I
(Breach of Contract – Loan and Security Agreements)

35. BHB incorporates by reference Paragraphs 1 through 34, as if set forth at length herein.

36. BHB and Salazar entered into valid contracts (Agreements 1 through 3, collectively “the Agreements”) wherein Salazar agreed to make monthly payments to BHB for the use of Equipment 1 through 3 (collectively “the Equipment”).

37. Salazar defaulted on the terms of the Agreements and therefore is in default for failure to pay.

38. BHB sustained significant damages in the amount of \$173,944.22 due to Salazar’s breach and default of the Agreements.

WHEREFORE, Plaintiff, BMO Harris Bank N.A. demands judgment against Defendant Don Salazar in the amount of \$173,944.22; as well as reasonable attorneys’ fees and costs; and such other relief as the Court may deem equitable and just.

COUNT II
(Replevin)

39. BHB incorporates by reference Paragraphs 1 through 38, as if set forth at length herein.

40. Pursuant to Paragraph 5.2 of the Agreements, entitled “Remedies,” upon default by Salazar, BHB may “exercise all of the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to require Debtor to assemble the Equipment and deliver it to Lender at a place to be designated by Lender and to enter any premises where the Equipment may be without judicial process and take possession thereof.”

41. BHB has notified Salazar of its intention to exercise its right to repossess the Equipment pursuant to the terms of the Agreements.

42. In response, Salazar has refused, and continues to refuse BHB access to the Equipment. Salazar is denying BHB access to the following unrecovered Equipment:

Year	Manufacturer	Model	Description	Serial Number
2017	TRAVIS	DUMP TRAILERS	DUMP TRAILERS: 42'- 38' FRAMELESS	48X1F3925H1011168

43. Salazar has defaulted on the terms of the Agreements and therefore is in default for failure to pay.

44. Plaintiff's interest therein will be adversely affected by the continued use by the Defendant of the Equipment due to wear and tear as well as depreciation.

WHEREFORE, Plaintiff, BMO Harris Bank N.A. demands judgment in favor of the Plaintiff and against Defendant Don Salazar for possession of the unrecovered Equipment; an award of attorneys' fees and costs as provided for by written agreement; and such other relief as the Court may deem equitable and just.

WONG FLEMING, P.C.

Dated: March 5, 2019

By: James K. Haney

James K. Haney, Esq.
821 Alexander Road, Suite 200
Princeton, NJ 08540
Tel: (609) 951-9520
Fax: (609) 951-0270
Email: jhaney@wongfleming.com